REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LAZI BAY RESOURCES DEVELOPMENT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5590

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 08 2001

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DECISION

This is a petition seeking for the issuance of a tax credit certificate in the amount of P12,175,688.95 allegedly representing unutilized input tax credits for the quarters ended March 31, 1996, June 30, 1996, September 30, 1996 and December 31, 1996.

The antecedent facts follow.

Petitioner is a domestic corporation existing under and by virtue of Philippine laws, with principal office located at Rm. 107, FCC Building, 119 Rada Street, Makati City. It is engaged in the mining business which includes the exploration, development and operation of mining properties for purposes of commercial production of limestone for export sale.

On January. 26, 1996, Petitioner was duly registered with the Board of Investments (BOI) as a new producer of limestone with a non-pioneer status and was issued Certificate of Registration No. EP 95-369 (Exh. LLL). Petitioner likewise registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer on February 1, 1996 and was issued Certificate of Registration RDO Control No. 96-047-005989 (Exh. A).

For the year 1996, Petitioner filed its quarterly VAT returns, all of which showed that it did not engage in commercial operations (Exhs. B, D, F, H). On March 19, 1998, however, Petitioner filed amended VAT returns likewise covering the four quarters of 1996, this time reflecting its input tax payments on local purchases of taxable goods and services as well as on its importation of capital goods, detailed as follows:

QTR. INVOLVED	EXH.	LOCAL PURCHASES	IMPORTATION	TOTAL INPUT TAX
1st Qtr.	C	P 3,517,016.22	-	P 3,517,016.22
2nd Qtr.	E	1,618,546.65	P2,820,160.01	4,438,706.66
3rd Qtr.	G	1,884,446.88	1,983,393.93	3,867,840.81
4th Qtr.	I	3,745,373.73	5,106,805.86	8,852,179.59
Total		P10,765,383.48	P9,910,359.80	P20,675,743.28

On March 27, 1998, pursuant to BIR Revenue Audit Memorandum Order No. 2-93, Petitioner filed with the One-Stop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance separate applications for tax credit of input taxes paid for the four quarters of 1996 in the aggregate amount of P20,675,761.28 (Exhs. J, K, L, M). It was observed that the total input tax for the four quarters of 1996 as shown in the VAT returns in the total amount of P20,675,743.28 is lesser as compared to the total input tax as shown in the separate applications for tax credit (P20,675,761.28).

Petitioner cites Section 100, in relation to Section 106, of the Tax Code, as the basis for its claim for refund, the pertinent provisions of which are as follows:

> "**SEC. 100**. *Value-added tax on sale of goods. – (a) Rate and base of tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or

exchanged, such tax to be paid by the seller or transferor: **Provided,** That the following sales by VAT-registered persons shall be subject to 0%:

(1) Export sales; and

(2) x x x

"Export Sales" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. "Foreign currency denominated sales" means sales to nonresidents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines.

SEC. 106. *Refunds or tax credits of input tax.* – (a) Export Sales. – An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines."

x x x

As there was no action on the part of Respondent and the two-year prescriptive period was about to expire, the instant Petition was filed on March 31, 1998. Petitioner prayed for the issuance of a tax credit certificate in the total amount of P20,675,743.28.

Respondent then filed his Answer on May 4, 1998 and raised the following Special and Affirmative Defenses:

"5. Pursuant to Section 106 (now Section 112 of the NIRC of 1997) a VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made;

6. It is therefore, the burden of herein petitioner to prove by convincing evidence that it is entitled to the issuance of a tax credit certificate or refund of the alleged input taxes paid on capital goods locally purchased in accordance with the aforestated Section 112 of the NIRC of 1997;

7. Well-settled is the jurisprudence that claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35*);

8. It is incumbent upon petitioner to show compliance with provisions of Sections 204, 112 and 229 of the NIRC of 1997."

On July 5, 2000, Petitioner filed an "Urgent Motion for Leave of Court to Amend Petition for Review and Manifestation" on the ground that on June 5, 2000, Petitioner received from the Department of Finance Tax Credit Certificate No. SN 023132 in the amount of P22,496,039.39 representing Petitioner's unutilized input VAT for local purchases of goods and services for the calendar years ended December 31, 1996 and December 31, 1997 (p. 246, CTA Records), broken down as follows:

1996:	P 8,500,072.33
1997:	13,995,967.06
	P22,496,039.39

On the other hand, the Department of Finance, through a letter dated March 16, 2000, granted authority to the Bureau of Customs to issue a tax credit certificate on value-added tax payments made on Petitioner's importation for the period January 1996 to December 1997 in the amount of P17,491,879.49 (p. 247, CTA Records). The Bureau of Customs, however, failed to act on the said letter.

During the hearing on July 10, 2000, the Court denied Petitioner's Motion for Leave of Court to Amend Petition for Review but required the latter to submit the Tax Credit Memo.

On August 10, 2000, Respondent's counsel manifested that since the Department of Finance has already granted to Petitioner a refund of input VAT in the amount of P8,500,072.33 for taxable year 1996, leaving a balance in the amount of P12,175,688.95, the only issue remaining to be resolved is whether or not Petitioner is entitled to the balance. Respondent then submitted his case for decision as he has no records of this case.

That Petitioner timely filed its claim for refund, both in the administrative and judicial level, is not disputed. Moreover, the VAT returns submitted by Petitioner clearly show that during the year 1996, it did not engage in commercial operations although it paid input taxes on its local purchases of taxable goods and services and importation of capital goods. Being a VAT-registered entity engaged in export selling, therefore, Petitioner may rightfully apply for the issuance of a tax credit certificate of input taxes paid, to the extent that such input tax has not been applied against output tax, on the basis of Section 106, now Section 112 of the National Internal Revenue Code, to state:

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2)

and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) *Capital Goods.* – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

(C) x x x

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

x x x

Thus, the sole issue We are tasked to resolve is factual: whether or not Petitioner was able to substantiate the balance of P12,175,688.95.

After a careful examination of the invoices, receipts, and import entry declarations adduced by Petitioner, We rule in its favor but in a reduced amount.

It is to be noted that insofar as Petitioner's claim for refund of input taxes on its local purchases of goods and services is concerned, the Department of Finance disallowed a total of P2,265,311.15, arrived at as follows:

Petitioner's Claim	P10,765,383.48
Less: Amount granted per TCC No. SN 023132	8,500,072.33
Amount disallowed	P2,265,311.15

While We concur with the disallowances made by Respondent, this Court finds, however, that the disallowed amount of P243,884.21 should be granted, the same having been substantiated by a valid invoice and official receipt. While the official receipt was dated April 16, 1997, the invoice, nonetheless, falls within the period claimed, December 31, 1996 (Exhs. P-170 and P-171).

With reference to the input taxes paid by Petitioner on its importation of capital goods, this Court adheres to the findings of the independent CPA that the amount of P1,983,329.40 must be disallowed as they were not properly documented.

WHEREFORE, in the light of the foregoing, the Court finds the instant Petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of P8,170,914.61 representing unutilized input VAT for local purchases of goods and services and importation of capital goods for the year 1996, computed as follows:

Allowable amount of 1996 input tax on local purchases Per Court's Verification	P 243,884.21
Allowable amount of 1996 input tax on importations	

Amount of 1996 claim for refund on importation	P9,910,359.80	
Less: Disallowance per SGV's verification	1,983,329.40	7,927,030.40
Total Refundable Amount		**P8,170,914.61**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge